

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Caman Group, Inc., W. Russell Floyd, Jr.,)
Falatok Properties, LLP, C. D. Walters,)
James Brockman, and C. Dan Adams,)

Plaintiffs,)

vs.)

Displayscape Media, Inc.,)
PhotoCraft/DSM, Inc., W. Glenn Terrell,)
and Cortney K. Foster,)

Defendants.)

Civil Action No.: 7:05-1475-RBH

**ORDER FOR JUDGMENTS AGAINST
CORTNEY K. FOSTER**

This is an action for breach of contract and breach of guarantee agreement. Defendant Cortney K. Foster ("Foster") was a guarantor of debt issued by Displayscape Media, Inc. to, among others, the Plaintiffs in this case. Defendant Foster is in default, said default having been entered by the Clerk of Court on August 29, 2005. Plaintiffs, Caman Group, Inc., W. Russell Floyd, Jr., Falatok Properties, LLP, C. D. Walters, James Brockman, and C. Dan Adams, seek default judgments against Defendant Foster. Each Plaintiff's claim is for a sum which can by computation be made certain. Each Plaintiff has submitted an affidavit setting forth the amount due.

BACKGROUND

Plaintiffs, among others, entered into a contract entitled Secured Note and Warrant Purchase Agreement dated as of August 27, 2004 ("Agreement") with Defendant Displayscape Media, Inc. ("Displayscape") as principal party. Defendant Foster was a guarantor of the obligations of Displayscape.

The Agreement provided, among other things, for the issuance, sale and delivery of debentures by Defendant Displayscape to named purchasers, including Plaintiffs. Pursuant to the

Agreement, Plaintiffs advanced funds to Displayscape and, in return, Displayscape issued to each Plaintiff a debenture dated August 27, 2004. The debentures were in the following principal amounts:

<u>Plaintiff</u>	<u>Principal Amount</u>
Camán Group, Inc.	\$109,333.33
W. Russell Floyd, Jr.	\$109,333.33
Falatok Properties, LLP	\$109,333.33
C.D. Walters	\$210,500.00
James Brockman	\$109,333.33
C. Dan Adams	\$100,000.00

The debentures provided, among other things, that interest at 14% per annum was to be paid monthly (in arrears) and that the entire principal amount outstanding and all accrued, but unpaid, interest was to be paid in full six years from the date of the debenture.

The Agreement provided that failure to make payment of all or any part of the debenture principal or interest on a date fixed for payment constituted an event of default under the Agreement and debenture. The Agreement and debentures provided for acceleration for the debt in the event of default without presentment, demand, protest, or notice of any kind, all of which were expressly waived by Defendant Displayscape and Foster as a guarantor.

The debentures further provided that if Defendant Displayscape failed to make payments for ninety (90) consecutive days all outstanding principal and accrued interest would bear interest at the rate of 21% per annum.

In the case of each debenture, interest payments began with the October 1, 2004 payment and continued through the February 1, 2005 payment. Displayscape was thereafter in default and the debt evidenced by each debenture was accelerated. Subsequently, a settlement was reached

which provided some additional payments to Plaintiffs ("Settlement"). Foster was not a party to the Settlement and Plaintiffs reserved all rights to proceed against him.

The debentures further provided that Defendant Displayscape would pay reasonable attorneys' fees incurred by Plaintiffs in enforcing their rights and remedies, not exceeding 10% of the debt outstanding under each debenture, plus reasonable expenses.

DISCUSSION

Plaintiffs are entitled to judgments against Foster. As alleged in the Complaint and the Amended Complaint and deemed admitted by Defendant Foster's default, Defendant Foster is in breach of the Agreement and each debenture in that he has failed to make payments when due under the terms of the Agreement and debentures. As a guarantor of the debt Defendant Foster had an obligation to pay the debt to the Plaintiff creditors. A guaranty of payment is an absolute or unconditional promise to pay a particular debt if it is not paid by the debtor at maturity. AMA Management Corp. v. Strasburger, 309 S.C. 213, 219, 420 S.E.2d 868, 872 (Ct.App. 1992). A guaranty is a personal obligation running directly from the guarantor to the creditor which is immediately enforceable against the guarantor upon default of the debtor. Id.

The unpaid principal amount of the debentures and accrued interest have been accelerated. The total debt due on each debenture as of November 1, 2006 includes (1) the principal debt and (2) interest due on the principal debt from the March 1, 2005 payment to the November 1, 2006 payment, reduced by the amount received by each Plaintiff pursuant to the Settlement. The debt to each Plaintiff as of November 1, 2006 is set forth in an affidavit filed by each Plaintiff and is addressed separately below.

Caman Group, Inc.

Caman Group is a party to the Agreement and the holder of Displayscape Debenture No. 5 dated August 27, 2004 in the principal amount of \$109,333.33. Interest payments for March 1,

2005 to June 1, 2005 at 14% per annum interest (\$1,275.56 per month) total \$5,102.24. Beginning with the July 1, 2005 payment interest is computed at 21% per annum. Interest payments for July 1, 2005 to November 1, 2006 at 21% per annum interest (\$1,913.33 per month) total \$32,526.61.

Principal and interest due as of November 1, 2006 total \$146,962.18. Payments received on the debt through the Settlement as of November 1, 2006 total \$6,720.00. The outstanding debt to Caman Group, Inc. as of November 1, 2006 is, therefore, \$140,242.18.

W. Russell Floyd, Jr.

W. Russell Floyd, Jr. is a party to the Agreement and the holder of Displayscape Debenture No. 6 dated August 27, 2004 in the principal amount of \$109,333.33. Interest payments for March 1, 2005 to June 1, 2005 at 14% per annum interest (\$1,275.56 per month) total \$5,102.24. Beginning with the July 1, 2005 payment interest is computed at 21% per annum. Interest payments for July 1, 2005 to November 1, 2006 at 21% per annum interest (\$1,913.33 per month) total \$32,526.01.

Principal and interest due as of November 1, 2006 total \$146,962.18. Payments received on the debt through the Settlement as of November 1, 2006 total \$6,720.00. The outstanding debt to W. Russell Floyd, Jr. as of November 1, 2006 is, therefore, \$140,242.18.

Falatok Properties, LLP

Falatok Properties, LLP, is a party to the Agreement and the holder of Displayscape Debenture No. 7 dated August 27, 2004 in the principal amount of \$109,333.33. Interest payments for March 1, 2005 to June 1, 2005 at 14% per annum interest (\$1,275.56 per month) total \$5,102.24. Beginning with the July 1, 2005 payment interest is computed at 21% per annum. Interest payments for July 1, 2005 to November 1, 2006 at 21% per annum interest (\$1,913.33 per month) total \$32,526.61.

Principal and interest due as of November 1, 2006 total \$146,962.18. Payments received on

the debt through the Settlement as of November 1, 2006 total \$6,720.00. The outstanding debt to Falatok Properties, LLP, as of November 1, 2006 is, therefore, \$140,242.18.

C.D. Walters

C.D. Walters is a party to the Agreement and the holder of Displayscape Debenture No. 10 dated August 27, 2004 in the principal amount of \$210,500.00. Interest payments for March 1, 2005 to June 1, 2005 at 14% per annum interest (\$2,455.83 per month) total \$9,823.32. Beginning with the July 1, 2005 payment interest is computed at 21% per annum. Interest payments for July 1, 2005 to November 1, 2006 at 21% per annum interest (\$3,683.75 per month) total \$62,623.75.

Principal and interest due as of November 1, 2006 total \$282,947.07. Payments received on the debt through the Settlement as of November 1, 2006 total \$12,915.50. The outstanding debt to C.D. Walters as of November 1, 2006 is, therefore, \$270,032.07.

James Brockman

James Brockman is a party to the Agreement and the holder of Displayscape Debenture No. 9 dated August 27, 2004 in the principal amount of \$109,333.33. Interest payments for March 1, 2005 to June 1, 2005 at 14% per annum interest (\$1,275.56 per month) total \$5,102.24. Beginning with the July 1, 2005 payment interest is computed at 21% per annum. Interest payments for July 1, 2005 to November 1, 2006 at 21% per annum interest (\$1,913.33 per month) total \$32,526.61.

Principal and interest due as of November 1, 2006 total \$146,962.18. Payments received on the debt through the Settlement as of November 1, 2006 total \$6,720.00. The outstanding debt to James Brockman as of November 1, 2006 is, therefore, \$140,242.18.

C. Dan Adams

C. Dan Adams is a party to the Agreement and the holder of Displayscape Debenture No. 8 dated August 27, 2004 in the principal amount of \$100,000.00. Interest payments for March 1, 2005 to June 1, 2005 at 14% per annum interest (\$1,166.67 per month) total \$4,666.68. Beginning

with the July 1, 2005 payment interest is computed at 21% per annum. Interest payments for July 1, 2005 to November 1, 2006 at 21% per annum interest (\$1,750.00 per month) total \$29,750.00.

Principal and interest due as of November 1, 2006 total \$134,416.68. Payments received on the debt through the Settlement as of November 1, 2006 total \$6,090.00. The outstanding debt to C. Dan Adams as of November 1, 2006 is, therefore, \$128,326.68.

Attorney's Fees

Plaintiffs' attorney's fees in this action are recoverable by the Plaintiffs from Defendant Cortney K. Foster by virtue of provisions contained in the debentures, each of which provides that the debtor "agrees to pay to the Holder reasonable attorneys' fees not exceeding a sum equal to ten percent (10%) of the outstanding balance owing on this Debenture, plus all reasonable expenses incurred by the Holder in exercising any of its rights and remedies." Plaintiffs' counsel has submitted an attorneys' fees affidavit which sets forth relevant matters for the award of attorneys fees including the time expended in handling this lawsuit. Pursuant to the contract provisions and the affidavit, the Court awards attorneys' fees in the amount of \$6,000.00. Per Plaintiffs' request, the award is to be prorated among the Plaintiffs in accordance with the principal debt due each Plaintiff as follows:

<u>Plaintiff</u>	<u>Attorneys Fees</u>
Caman Group, Inc.	\$877.20
W. Russell Floyd, Jr.	\$877.20
Falatok Properties, LLP	\$877.20
C.D. Walters	\$1,689.00
James Brockman	\$877.20
C. Dan Adams	<u>\$802.20</u>
Total	\$6,000.00

CONCLUSION

For the foregoing reasons judgment shall be entered for each Plaintiff as set forth below.

IT IS THEREFORE ORDERED that judgment be entered for each Plaintiff in the amount of the outstanding debt as of November 1, 2006 plus interest on the outstanding principal debt at the contract rate of 21% per annum which shall continue to accrue on outstanding principal debt until paid, plus attorneys fees as set forth above. Judgment shall be entered for each Plaintiff as follows:

Caman Group, Inc.	\$140,242.18 plus \$877.20 attorneys fees plus interest from November 1, 2006 as set forth above.
W. Russell Floyd, Jr.	\$140,242.18 plus \$877.20 attorneys fees plus interest from November 1, 2006 as set forth above.
Falatok Properties, LLP	\$140,242.18 plus \$877.20 attorneys fees plus interest from November 1, 2006 as set forth above.
C.D. Walters	\$270,032.07 plus \$1,689.00 attorneys fees plus interest from November 1, 2006 as set forth above.
James Brockman	\$140,242.18 plus \$877.20 attorneys fees plus interest from November 1, 2006 as set forth above.
C. Dan Adams	\$128,326.68 plus \$802.20 attorney fees plus interest from November 1, 2006 as set forth above.

AND IT IS SO ORDERED.

s/R. Bryan Harwell
 R. Bryan Harwell
 United States District Court Judge

February 6, 2007
 Florence, SC